

FIRST DAY - NOVEMBER 7, 2002

LEGISLATIVE JOURNAL

NINETY-SEVENTH LEGISLATURE THIRD SPECIAL SESSION

FIRST DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, November 7, 2002

PRAYER

The prayer was offered by Senator Coordsen.

ROLL CALL

Pursuant to a proclamation by the Honorable Governor of the State of Nebraska, Mike Johanns, the Ninety-Seventh Legislature, Third Special Session of the Legislature of Nebraska, assembled in the George W. Norris Legislative Chamber of the State Capitol, at the hour of 3:00 p.m., Thursday, November 7, 2002, and was called to order by President Heineman.

The roll was called and the following members were present:

Aguilar, Raymond	Foley, Mike	Raikes, Ronald E.
Baker, Thomas C.	Hartnett, D. Paul	Redfield, Pam
Beutler, Chris	Hudkins, Carol L.	Robak, Jennie
Bourne, Patrick J.	Janssen, Ray	Schimek, DiAnna R.
Brashear, Kermit	Jensen, Jim	Schrock, Ed
Bromm, Curt	Johnson, Joel T.	Smith, Adrian
Brown, Pam	Jones, James E.	Stuhr, Elaine
Burling, Carroll	Kremer, Bob	Suttle, Deborah S.
Byars, Dennis M.	Kruse, Lowen	Synowiecki, John F.
Chambers, Ernie	Maxwell, Chip	Thompson, Nancy
Connealy, Matt	McDonald, Vickie D.	Tyson, Gene
Coordsen, George	Pedersen, Dwite	Vrtiska, Floyd P.
Cudaback, Jim D.	Pederson, Don	Wehrbein, Roger R.
Cunningham, Douglas D.	Preister, Don	
Engel, L. Patrick	Price, Marian L.	
Erdman, Philip	Quandahl, Mark	

The following members were excused:

Dierks, Merton L.	Hlava, Fred	Landis, David M.
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DECLARATION

Pursuant to a proclamation issued by the Honorable Mike Johanns, Governor of Nebraska, we are here and now assembled in the Ninety-Seventh Legislature, Third Special Session of the Nebraska Legislature. I, as President of the Legislature, declare that we are now open for the transaction of business.

(Signed) Dave Heineman
President of the Legislature

PROCLAMATION

WHEREAS, BY VIRTUE OF THE AUTHORITY VESTED in the Governor by Article IV, Section 8, of the Constitution of the State of Nebraska, I, Mike Johanns, as Governor of the State of Nebraska, believing that an extraordinary occasion has arisen, DO HEREBY CALL the Legislature of Nebraska to convene in extraordinary session at the State Capitol on November 7, 2002, at 3:00 p.m. for the purpose of considering and enacting legislation on only the following subjects:

1. To enact procedures for jury participation in the first degree murder sentencing process as required by the recent decision of the Supreme Court of the United States in *Ring v. Arizona*;
2. To enact procedures to establish lethal injection as a means of enforcing a sentence of death; and
3. To appropriate funds for the necessary expenses of the extraordinary session herein called.

I direct that members of the Legislature of the State of Nebraska be notified of the convening of this extraordinary session by presenting to each of them a copy of this Proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand, and cause the Great Seal of the State of Nebraska to be affixed this twenty-ninth day of October, in the year of our Lord Two Thousand Two.

(Signed) Mike Johanns
Governor

Attest:

(Signed) John A. Gale
Secretary of State

(SEAL)

RESIGNATION

November 6, 2002

Governor Mike Johanns
P.O. Box 94848
State Capitol
Lincoln, NE 68509

Dear Governor Johanns:

I'm writing to inform you that effective today, November 6, 2002, I hereby resign my seat in the Nebraska Legislature.

(Signed) Sincerely,
Jon Bruning

CERTIFICATE

State of Nebraska

United States of America,)
) ss. Department of State
State of Nebraska)

I, John A. Gale, Secretary of State of the State of Nebraska do hereby certify that the attached is a true and correct copy of the Official Roster of members of the Nebraska Unicameral Legislature elected or appointed to serve in the Ninety-Seventh Legislature, Third Special Session, 2002.

Further, I hereby certify that the members so listed on the Official Roster attached hereto are the duly elected or appointed members of the Unicameral Legislature in the State of Nebraska for the Ninety-Seventh Legislature, Third Special Session, 2002.

Finally, I hereby certify that all election returns, abstracts, canvass and appointment records with reference to said members are on file in the office of the Secretary of State and are a matter of public record.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this Seventh day of November in the year of our Lord, two thousand and two.

(SEAL)

John A. Gale, Secretary of State

DISTRICT/NAME	ELECTED
1 Floyd P. Vrtiska	November 7, 2000
2 Roger R. Wehrbein	November 3, 1998
3 Vacant	
4 Kermit Brashear	November 3, 1998
5 Don Preister	November 7, 2000
6 Pam Brown	November 3, 1998
7 John F. Synowiecki	Appointed January 7, 2002
8 Patrick J. Bourne	November 3, 1998
9 Chip Maxwell	November 7, 2000
10 Deborah S. Suttle	November 3, 1998
11 Ernie Chambers	November 7, 2000
12 Pam Redfield	November 3, 1998
13 Lowen Kruse	November 7, 2000
14 Nancy Thompson	November 3, 1998
15 Ray Janssen	November 7, 2000
16 Matt Connealy	November 3, 1998
17 L. Patrick Engel	November 7, 2000
18 Douglas D. Cunningham	November 7, 2000
19 Gene Tyson	November 7, 2000
20 Jim Jensen	November 3, 1998
21 Carol L. Hudkins	November 7, 2000
22 Jennie Robak	November 3, 1998
23 Curt Bromm	November 7, 2000
24 Elaine Stuhr	November 3, 1998
25 Ronald E. Raikes	November 7, 2000
26 Marian L. Price	November 3, 1998
27 DiAnna R. Schimek	November 7, 2000
28 Chris Beutler	November 3, 1998
29 Mike Foley	November 7, 2000
30 Dennis M. Byars	November 3, 1998
31 Mark Quandahl	November 7, 2000
32 George Coordsen	November 3, 1998
33 Carroll Burling	November 7, 2000
34 Bob Kremer	November 3, 1998
35 Raymond Aguilar	November 7, 2000
36 Jim D. Cudaback	November 3, 1998
37 Joel T. Johnson	Appointed July 1, 2002
38 Ed Schrock	November 3, 1998
39 Dwite Pedersen	November 7, 2000
40 Merton L. Dierks	November 3, 1998
41 Vickie D. McDonald	Appointed August 10, 2001
42 Don Pederson	November 3, 1998
43 James E. Jones	November 7, 2000
44 Thomas C. Baker	November 3, 1998
45 D. Paul Hartnett	November 7, 2000
46 David M. Landis	November 3, 1998
47 Philip Erdman	November 7, 2000
48 Adrian Smith	November 3, 1998
49 Fred Hlava	Appointed June 6, 2002

MOTION - Election of Officers

Senator Coordsen moved that the following officers, recommended by the Executive Board, be elected to serve for the Ninety-Seventh Legislature, Third Special Session:

Clerk of the Legislature
 Assistant Clerk of the Legislature
 Sergeant at Arms

Patrick J. O'Donnell
 Richard K. Brown
 Lynne Yost

The motion prevailed.

MOTION - Adjourn Sine Die

Senator Chambers offered the following motion:
 To adjourn sine die.

Senator Chambers requested a roll call vote on his motion to adjourn sine die.

Voting in the affirmative, 13:

Chambers	Hartnett	Pedersen, Dw.	Robak	Synowiecki
Coordsen	Kruse	Price	Schimek	
Foley	Maxwell	Raikes	Suttle	

Voting in the negative, 26:

Aguilar	Cunningham	Johnson	Redfield	Vrtiska
Baker	Engel	Jones	Schrock	Wehrbein
Bourne	Erdman	Kremer	Smith	
Brashear	Hudkins	McDonald	Stuhr	
Burling	Janssen	Pederson, D.	Thompson	
Byars	Jensen	Quandahl	Tyson	

Present and not voting, 6:

Beutler	Brown	Cudaback
Bromm	Connealy	Preister

Excused and not voting, 3:

Dierks	Hlava	Landis
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The Chambers motion to adjourn sine die failed with 13 ayes, 26 nays, 6 present and not voting, and 3 excused and not voting.

MESSAGES FROM THE GOVERNOR

August 29, 2002

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individual has been reappointed to the Nebraska Ethanol Board.

APPOINTEE:

Michael P. Alberts, 2004 E 24th Road, Marquette NE 68854

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

October 3, 2002

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individual has been appointed to the Environmental Quality Council.

APPOINTEE:

James D. Whitaker, 2311 Birchwood Rd, North Platte NE 69101

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

October 25, 2002

President, Speaker Bromm

and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individuals have been appointed to the Nebraska Investment Council.

APPOINTEES:

Earl Scudder, 9301 E Pioneer Blvd, Lincoln NE 68520
Gail Werner-Robertson, 1215 N 136th St, Omaha NE 68154

The aforementioned names are respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

October 25, 2002

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individual has been reappointed as the Property Tax Administrator.

APPOINTEE:

Catherine D. Lang, 5932 Fieldcrest Way, Lincoln NE 68512

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

October 25, 2002

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individual has been appointed to the State Electrical Board.

APPOINTEE:

George M. Morrissey, 4327 N 142nd St, Omaha NE 68164

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

October 25, 2002

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm, and Members:

Contingent upon your approval, the following individual has been appointed as the State Investment Officer.

APPOINTEE:

Carol Kontor, 9847 Harney Parkway South, Omaha NE 68114

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

ATTORNEY GENERAL'S OPINIONS

Opinion #02026

DATE: September 23, 2002

SUBJECT: Wrongful Death Action in the Case of an Unborn Child

REQUESTED BY: Senator Mike Foley
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Mark D. Starr, Assistant Attorney General

QUESTION: Could a person successfully litigate a civil action for the wrongful death of an unborn child in this state?

CONCLUSION: Probably not.

You observe that most of the states have established the right to maintain civil wrongful death actions in the case of unborn children. You further point out that with the exception of Tennessee, which created the right by legislative action, the states did this by judicial decision. Finally, you cite to the passage of LB 824 (97th. Leg., 2nd Sess. 2002), the Homicide of the Unborn Child Act, which, with certain exceptions, makes it a crime to kill or cause the death of an unborn child. In view of these things, you ask whether a person could successfully bring a civil action for the wrongful death of an unborn child in Nebraska, or whether legislation would be necessary to establish such a cause of action.

We believe it unlikely that a person could successfully litigate a wrongful death suit for the death of an unborn child in this state. The Nebraska Supreme Court has consistently held that legislative action would be required before a wrongful death action would be recognized in such circumstances. *Smith v. Columbus Community Hospital, Inc.*, 222 Neb. 776, 387 N.W.2d 490 (1986), *Egbert v. Wenzl*, 199 Neb. 573, 260 N.W.2d 480 (1977), and *Drabbels v. Skelly Oil Co.*, 155 Neb. 17, 50 N.W.2d 229 (1951). The court reasoned that at common law an unborn child was not recognized as a person insofar as the law of torts was concerned and that while the legislature was free to change that, it had not done so. Quoting from its 1977 *Egbert* decision, the court wrote, "[i]n the 26 years since *Drabbels* was decided, the Nebraska legislature has not acted to include a viable fetus within the definition of person under section 30-809, R.R.S. 1943 [the wrongful death statute]." *Smith*, 222 Neb. at 779, 387 N.W.2d at 492.

At the time *Smith* was decided the legislature had clearly indicated an intention to protect an unborn fetus to the extent allowed by U.S. Supreme Court decisions. See Neb. Rev. Stat. § 28-325 (1) (1995). This apparently was not enough to convince the court to veer from its prior course. Nor was the court persuaded by scientific advances which had made it possible to supply evidence of causation between alleged prenatal injury and damage. That a majority of the states had recognized wrongful death actions for prenatal injury causing stillbirth of a viable fetus carried no weight, either. 222 Neb. at 781, 387 N.W.2d at 493 (dissent of Judge Shanahan). *Drabbels*, *Egbert* and *Smith* clearly placed the ball in the legislature's court, but now, 16 years after *Smith*, and 51 years after *Drabbels*, the wrongful death statute is essentially unchanged. Consequently, if once again confronted with the question, the court is apt to invoke the proposition that "[w]here a statute has been judicially construed and that construction has not evoked an

amendment, it will be presumed that the Legislature has acquiesced in the court's determination of the Legislature's intent." *Paulk v. Central Laboratory Associates, P.C.*, 262 Neb. 838, 851, 636 N.W.2d 170, 181 (2001) (citations omitted).

Where the cause of action is a legislatively designed one and the legislature has apparently acquiesced in the court's interpretation of that design, the court will generally not engage in its own remodeling. It is doubtful that the enactment of the Homicide of the Unborn Child Act will cause the court to depart from its prior decisions. Holding a person accountable to the state under the criminal laws presents different issues than are involved in the civil tort arena. The court will probably be of the view that if the legislature wanted to expand the wrongful death cause of action to encompass injury to a fetus, it was, and remains, the legislature's prerogative.

Sincerely,
Don Stenberg
Attorney General
(Signed) Mark D. Starr
Assistant Attorney General

cc: Patrick O'Donnell
Clerk of the Legislature
26-233-21

Opinion #02027

DATE: October 25, 2002

SUBJECT: Authority Of The State Treasurer To Implement A
Centralized Receipt And Deposit System For State
Monies Without Additional Legislation.

REQUESTED BY: Senator Pam Brown
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

In your opinion request letter, you indicate that you are contemplating introducing legislation at the next legislative session which would authorize the Nebraska State Treasurer to manage a centralized receipt and deposit system for checks and other funds received by state agencies. You describe that system in the following terms:

... all payments to state agencies would be assigned a specific post office box. The unique box number would identify the receipting agency and type of payment. The envelopes would be opened on automated equipment, contents extracted, contents imaged, images sent to the appropriated agency personnel, the checks encoded for bank deposit and the accounting document prepared for DAS Accounting. The paper contents of each envelope (minus the check) could than (sic) be routed to the appropriate agency personnel if requested.

You pose two questions to us regarding the proposed centralized receipt and deposit system.

Question No. 1. "Is Legislation authorizing the State Treasurer to manage a centralized receipt and deposit system even necessary or does the State Treasurer already have the power to implement such a system pursuant to his or her duties prescribed in Neb. Rev. Stat. sec. 84-602?"

As noted in your opinion request letter, the statutory duties of the Nebraska State Treasurer are set out generally at Neb. Rev. Stat. § 84-602 (1999). The portion of that statute which is pertinent to your inquiry states that it shall be the duty of the State Treasurer to "receive and keep all money of the state not expressly required to be received and kept by some other person." Therefore, to respond to your initial question, we must determine whether, in our view, that statutory language is sufficient to authorize the Treasurer to implement the centralized receipt and deposit system described in your opinion request.

As a general rule, state officers, boards and agencies have such powers as are delegated to them by express constitutional and statutory provisions, or as may be implied from the nature of particular duties imposed upon them. 81A C.J.S. States § 120; Op. Att'y Gen. No. 00002 (January 4, 2000). Executive officers generally have no powers beyond those granted by express provision or necessary implication. *Id.* In the present case, the general language of § 84-602 at issue does not expressly authorize the State Treasurer to implement the centralized system of receipts and deposits described in your request letter. As a result, any authority for the Treasurer to implement that system must be necessarily implied from the language of § 84-602 which authorizes the Treasurer to "receive and keep all money of the state."

On balance, we believe that it is doubtful that the authority to establish a centralized receipt and deposit system of the complexity described in your opinion request can be necessarily implied from the Treasurer's authority in § 84-602. For one thing, that type of system, which would seem to even affect the State's mail deliveries, does not appear to be required for the Treasurer to receive and keep the State's money. In addition, the Accounting Division of the Department of Administrative Services has promulgated the Nebraska Accounting System Manual under authority of Neb. Rev. Stat. § 81-1111 (1999), and that manual contains procedures for the receipt and deposit of monies with the State Treasurer by state agencies. Nebraska Accounting System Manual, Processing Procedures, PROC-120. It is difficult to argue that

the authority for a centralized receipt and deposit system is necessarily implied under the general language of § 84-602 when a system already exists for the receipt of state monies under authority of other state statutes. As a result, we do not believe that the State Treasurer has clear statutory authority to establish the centralized receipt and deposit system described in your opinion request under § 84-602, and you may wish to move forward with legislation in that area if you believe that the Treasurer should have such authority.

Question No. 2. "Are there any other constitutional or other legal impediments relative to the State Treasurer managing such a system?"

Your second question does not indicate what constitutional or other legal impediments are the subject of your concern. Therefore, absent any indication of what specific legal problems are at issue, our response to that question must necessarily be general. Op. Att'y Gen. No. 00002 (January 4, 2002); Op. Att'y Gen. No. 98040 (September 11, 1998). With that in mind, we are unaware of any constitutional or other legal impediments relative to the State Treasurer managing the centralized receipt and deposit system described in your correspondence, provided the Treasurer has specific statutory authority to do so. However, given the provisions in the Nebraska Accounting Systems Manual noted above, we do suggest that any new statutes in this area take into account their interface with the existing statutes and regulations pertaining to the functions of the Accounting Division of the Department of Administrative Services. In addition, any new statutes in this area should also take into account any other existing statutes giving specified agencies or officers the authority to receive state monies.

Sincerely yours,
DON STENBERG
Attorney General
(Signed) Dale A. Comer
Assistant Attorney General

cc. Patrick O'Donnell
Clerk of the Legislature
05-129-21

Opinion #02028

DATE: November 5, 2002

SUBJECT: Private Prison Contracting Act

REQUESTED BY: Senator Ray Aguilar
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Mark D. Starr, Assistant Attorney General

- QUESTIONS:
1. Does the Private Prison Contracting Act apply where a county wants to make its county jail available for the placement of "contract inmates"?
 2. Does the Act apply to a private/public partnership formed to design, finance, and build a county owned correctional facility which is to be managed by a private entity under the supervision of a county board of corrections or a county sheriff?

- CONCLUSION:
1. Not for the most part.
 2. The Act applies to the extent it expressly withholds authorization for such a project.

The Private Prison Contracting Act, Neb. Rev. Stat. §§ 47-801 to 47-807 (2001 Supp.), allows the Nebraska Department of Correctional Services to use the services of private prison contractors, either as managers of the Department's own facilities or, if certain need-based criteria are met, as builders and operators of private correctional facilities. The Act indicates that if such private contractors are to be used, then various, specified contract provisions must be included to ensure proper operation and oversight of the facility and to minimize or eliminate the State's liability.

You ask if the Act applies to a county correctional facility which desires to open its doors on a contract basis to inmates committed to the Department. In our opinion, the Act really does not address the use of county correctional facilities for the placement of such inmates. If it touches upon the subject at all, it is in Neb. Rev. Stat. § 47-802(1), which begins: "The Department of Correctional Services is authorized to provide for incarceration, supervision, and residential treatment at facilities other than those operated by the Department of Correctional Services." The paragraph sets forth various services which are to be afforded inmates assigned to such facilities, and then goes on to specify that "[s]uch services, if provided by private prison contractors, shall be contracted for as required by the Private Prison Contracting Act." The paragraph concludes with the statement that inmates incarcerated in a correctional institution operated under this subsection shall be treated as reasonably and humanely as inmates in institutions of the Department. The rest of the Act is essentially devoted to the subject of private prison contractors.

Next, you ask whether the Act applies to a public/private partnership to construct a county owned jail facility which may be placed under private management under the supervision of the county board of corrections or the county sheriff. We believe the Act applies to the extent it expressly withholds authorization from such an arrangement. According to Neb. Rev. Stat. § 47-806, the Act "does not authorize a county or other political subdivision to enter into a contract with a private prison contractor to construct or operate a correctional facility within or on behalf of such county or other political

subdivision." According to Senator Schimek, the introducer of the legislation, this section was added to clarify that a private prison "has to be done through the state and with the approval of the Department of Corrections". Floor Debate on LB 85, 97th Neb. Leg., 1st Sess. 8355 (May 29, 2001).

Sincerely,
Don Stenberg
Attorney General
(Signed) Mark D. Starr
Assistant Attorney General

cc: Patrick O'Donnell
Clerk of the Legislature

REPORTS

The following reports were received by the Legislature:

Administrative Services, Department of

Annual Budgetary Report for year ended June 30, 2002
Information Technology Commission Project Status Summary, July 2002
Risk Management/State Claims Board, State Tort Claims Act and State
Miscellaneous Claims Act Report, July 1, 2001 to June 30, 2002
Risk Management, Workers' Compensation Act Report, 2002

Agriculture, State Board of

2001 Proceedings, Annual Meeting

Auditor of Public Accounts

Audit reports for the following:

Administrative Services, Department of, Program 173 - Division of
Communications, FY 2002
Dairy Industry Development Board, FY 2002
Environmental Quality, Department of, FY 6/30/02
Health and Human Services System, Western Nebraska Veterans' Home,
FY 2002
Retirement System, Public Employees, Deferred Compensation Plan,
FY 2001
Retirement Systems, Public Employees, State and County Employees
Retirement Plans, FY 2001
Revenue, Department of, Charitable Gaming Investigation Petty Cash
Fund, FY 2002
Revenue, Department of, Cigarette Tax Receipts, FY 2002
Revenue, Department of, Motor Fuel Tax Enforcement and Collection
Division, FY 2002

Criminal Justice, Commission on Law Enforcement and

Annual Report 2001

Economic Development, Department of

Proposed 2003 Annual Action Plan of Housing and Community
Development Programs
Proposed 2001 Annual Performance Report for the Nebraska Housing and
Community Development Programs Consolidated Plan

Fire Marshal, State

Volunteer Emergency Responders Recruitment and Retention Act

Government, Military and Veterans Affairs Committee, Legislative

2002 Nebraska Boards and Commissions Report

Health and Human Services System

Newborn Screening Program and Newborn Hearing Screening Program

2001 Annual Report

Office of the System Advocate Quarterly Report, July - September 2002

Office of Women's Health Annual Report 2001-2002

Investment Council

10-year cash flow projection for the Health Care Endowment Fund

Investment Finance Authority

1999 Series A-1, A-2, B-1, B-2, C-1, C-2, D-1 and D-2 Community Development Loan Notes (City of Lincoln Program - 1999)

2002 Series D, E & F Single Family Housing Revenue Bonds

Agricultural First-Time Farmer Program Report

Drinking Water State Revolving Fund Revenue Bonds Series 2001 A

State Revolving Fund Revenue Bonds for the Wastewater Treatment Facilities (Clean Water) State Revolving Fund Program

Insurance, Department of

Interstate Insurance Receivership Commission 2001 Annual Report

Legislative Fiscal Office

Re-certification of General Fund net receipts for fiscal year beginning July 1, 2002. Monthly receipt estimates derived from the annual net receipt estimate of the Economic Forecasting Advisory Board produced July 18, 2002. (Prepared jointly by the Department of Revenue and Legislative Fiscal Analyst)

Legislative Program Evaluation Committee

Legislative Program Evaluation Committee Annual Report, Fiscal Year 2001-2002

Natural Resources, Department of

2002 Biennial Nebraska Resources Development Fund Report

Annual Report and Plan of Work for the Nebraska State Water Planning and Review Process

Policy Research Office, Governor's

Municipal Natural Gas Regulation Revolving Loan Fund Quarterly Report, July 1, 2002 through September 30, 2002

Power Review Board

2002 'Condition Certain' Annual Report

Public Service Commission

Nebraska Public Service Commission's 2001 Annual Report on Telecommunications

Nebraska Telecommunications Industry Annual Report

Revenue, Department of

Nebraska Lottery Annual Report, July 1, 2001 through June 30, 2002

Re-certification of General Fund net receipts for fiscal year beginning July 1, 2002. Monthly receipt estimates derived from the annual net receipt estimate of the Economic Forecasting Advisory Board produced July 18, 2002. (Prepared jointly by the Department of Revenue and Legislative Fiscal Analyst)

Tax Expenditure Report and Summary for 2002

Roads, Department of

Board of Public Roads Classifications and Standards Minutes for July 2002

State Highway Commission Quarterly Report as of September 30, 2002

Supreme Court

Office of Probation Administration's 2000-2001 Biennial Report

UNANIMOUS CONSENT - Member Excused

Senator Suttle asked unanimous consent to be excused. No objections. So ordered.

MOTION - Notify Governor

Senator Vrtiska moved that a committee of five be appointed to notify the Governor that the Legislature is now convened, organized, and ready for the transaction of business and to return with any message the Governor may have for this, the Ninety-Seventh Legislature, Third Special Session of the Nebraska Legislature.

The motion prevailed.

The Chair appointed Senators Hudkins, Aguilar, Bourne, Kremer, and Burling to serve on said committee.

The committee returned and escorted Governor Mike Johanns to the rostrum where he delivered a message to the members.

The committee escorted Governor Johanns from the Chamber.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 1. Introduced by Speaker Bromm, 23; at the request of the Governor.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 29-1602, 29-2520, 29-2521, 29-2522, and 29-2524, Reissue Revised Statutes of Nebraska; to change procedures relating to information and sentencing for capital crimes; to provide intent; to harmonize provisions; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 2. Introduced by Speaker Bromm, 23; at the request of the Governor.

A BILL FOR AN ACT relating to the death penalty; to amend sections 29-2532, 29-2533, 29-2542, and 29-2543, Reissue Revised Statutes of Nebraska; to change the method of inflicting the death penalty; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 3. Introduced by Speaker Bromm, 23; at the request of the Governor.

A BILL FOR AN ACT relating to appropriations; to appropriate funds for the expenses incurred during the Ninety-seventh Legislature, Third Special Session, 2002; and to declare an emergency.

LEGISLATIVE BILL 4. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 29-2519, 29-2520, 29-2522, and 29-2524, Reissue Revised Statutes of Nebraska, and sections 28-101 and 29-2523, Revised Statutes Supplement, 2002; to provide intent; to provide for a capital offense and change sentencing procedures as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 5. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 6. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 7. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 8. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 9. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 10. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 11. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to crimes and offenses; to prohibit imposition of the death penalty as prescribed.

LEGISLATIVE BILL 12. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 13. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to homicide; to amend section 28-302, Reissue Revised Statutes of Nebraska; to redefine a term; and to repeal the original section.

LEGISLATIVE BILL 14. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 15. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 16. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 17. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 18. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to murder; to amend section 28-303, Reissue Revised Statutes of Nebraska; to change provisions relating to murder in the first degree; and to repeal the original section.

LEGISLATIVE BILL 19. Introduced by Chambers, 11.

A BILL FOR AN ACT relating to the death penalty; to amend sections 23-3406, 24-1106, 25-1140.09, 27-609, 28-104, 28-303, 29-1822, 29-2005, 29-2006, 29-2020, 29-2282, 29-2407, 29-2801, 29-3205, 29-3928, and 55-480, Reissue Revised Statutes of Nebraska, and sections 27-803, 28-105, 29-3920, 29-3922, 29-3929, 29-3930, 29-3931, and 83-4,143, Revised Statutes Supplement, 2002; to change a penalty from death to maximum of life imprisonment without possibility of parole; to provide for restitution and standards for sentencing; to harmonize provisions; to eliminate capital punishment provisions; to repeal the original sections; and to outright repeal sections 24-1105, 29-2519 to 29-2521.01, 29-2521.03 to 29-2522, 29-2524 to 29-2524.02, 29-2527, 29-2528, 29-2532 to 29-2546, 29-2811, and 83-1,132, Reissue Revised Statutes of Nebraska, and sections 28-105.01, 29-2521.02, 29-2523, and 29-2525, Revised Statutes Supplement, 2002.

RESOLUTIONS

LEGISLATIVE RESOLUTION 1. Introduced by Thompson, 14.

WHEREAS, the Papillion-La Vista Girls' Softball Team entered the 2002 season as the seven-time defending Class A state softball champions; and

WHEREAS, on October 21, 2002, the Papillion-La Vista Girls' Softball Team won its eighth consecutive Class A state softball championship in an exciting come-from-behind victory; and

WHEREAS, Head Coach Mike Govig and the members of the Papillion-La Vista Girls' Softball Team achieved this exceptional accomplishment through their hard work, resolve, and team play.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature recognizes and congratulates coaches and members of the 2002 Papillion-La Vista Monarchs Girls' Softball Team for their outstanding accomplishments.

2. That a copy of this resolution be sent to the Papillion-La Vista Girls' Softball Team and Head Coach Mike Govig.

Laid over.

LEGISLATIVE RESOLUTION 2. Introduced by Thompson, 14.

WHEREAS, The Papillion-La Vista High School marching band competed at the Nebraska State Bandmasters Association State Marching competition on October 26, 2002; and

WHEREAS, for the third straight year the Monarchs received a superior rating at this band competition; and

WHEREAS, this also marked the third straight week of receiving a superior rating at a band competition; and

WHEREAS, the Monarchs will be competing at the Outback Bowl competition in Tampa, Florida, later this year; and

WHEREAS, Band Director Bill Kellett and the members of the Papillion-La Vista High School marching band achieved this outstanding accomplishment through their hard work and commitment to excellence.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION:

1. That the Legislature recognizes and congratulates the members of the 2002 Papillion-La Vista High School marching band for their exceptional accomplishments.

2. That a copy of this resolution be sent to the Papillion-La Vista High School marching band and Band Director Bill Kellett.

Laid over.

EASE

The Legislature was at ease from 4:08 p.m. until 4:12 p.m.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 20. Introduced by Beutler, 28.

A BILL FOR AN ACT relating to murder in the first degree; to amend sections 28-303, 29-2027, 29-2519 to 29-2521, 29-2521.03, 29-2522, 29-2524, 29-2527, 29-2528, 29-2532, 29-2533, 29-2542, 29-2543, and 83-1,105.01, Reissue Revised Statutes of Nebraska, and sections 28-105 and 29-2523, Revised Statutes Supplement, 2002; to change penalty provisions; to provide for a jury determination on aggravating circumstance; to change and eliminate provisions relating to a sentencing panel of judges; to change provisions relating to sentencing proceedings; to change provisions relating to postconviction proceedings; to change the method of inflicting the death penalty; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 21. Introduced by Raikes, 25.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-303 and 28-304, Reissue Revised Statutes of Nebraska; to reclassify a category of murder in the first degree; and to repeal the original sections.

LEGISLATIVE BILL 22. Introduced by Raikes, 25.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-303, Reissue Revised Statutes of Nebraska; to eliminate a category of murder in the first degree; and to repeal the original section.

RESOLUTION**LEGISLATIVE RESOLUTION 3CA.** Introduced by Beutler, 28.

THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, THIRD SPECIAL SESSION, RESOLVE THAT:

Section 1. At the general election in November 2004 the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article IV, section 13:

IV-13 "(1) The Legislature shall provide by law for the establishment of a Board of Parole and the qualifications of its members. ~~Said The~~ board, or a majority thereof, shall have power to grant paroles after conviction and judgment, under such conditions as may be prescribed by law, for any offenses committed against the criminal laws of this state except treason and cases of impeachment.

(2) The Governor, Attorney General, and Secretary of State, sitting as a board, shall have power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations in all cases of conviction for offenses against the laws of the state, except treason and cases of impeachment. The board shall not pardon or commute the sentence of an offender sentenced to life imprisonment without parole unless the board is unanimous in its decision to pardon or commute and either (a) the offender is elderly, permanently infirm, or permanently disabled and the offender poses no threat to the public safety or (b) based on newly discovered evidence presented to the board, a reasonable doubt as to the offender's guilt is created. The Board of Parole may advise the Governor, Attorney General, and Secretary of State on the merits of any application for remission, respite, reprieve, pardon, or commutation, but such advice shall not be binding on them.

(4) The Governor shall have power to suspend the execution of the sentence imposed for treason until the case can be reported to the Legislature at its next session, when the Legislature shall either grant a pardon, or commute the sentence or direct the execution, or grant a further reprieve."

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

"A constitutional amendment to place restrictions on the power of the board of pardons in commuting a sentence of life imprisonment without parole or pardoning an offender sentenced to life imprisonment without parole.

For
Against".

Referred to the Reference Committee.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

LB/LR	Committee
LB 1	Judiciary
LB 2	Judiciary
LB 3	General File
LB 4	Judiciary
LB 5	Judiciary
LB 6	Judiciary
LB 7	Judiciary
LB 8	Judiciary
LB 9	Judiciary
LB 10	Judiciary
LB 11	Judiciary
LB 12	Judiciary
LB 13	Judiciary
LB 14	Judiciary
LB 15	Judiciary
LB 16	Judiciary
LB 17	Judiciary
LB 18	Judiciary
LB 19	Judiciary
LB 20	Judiciary
LB 21	Judiciary
LB 22	Judiciary
LR 3CA	Judiciary

Alberts, Michael P. - Nebraska Ethanol Board - Natural Resources

Kontor, Carol - State Investment Officer - Nebraska Retirement Systems

Lang, Catherine D. - Property Tax Administrator - Revenue

Morrissey, George M. - State Electrical Board - General Affairs

Scudder, Earl - Nebraska Investment Council - Nebraska Retirement Systems

Werner-Robertson, Gail - Nebraska Investment Council - Nebraska Retirement Systems

Whitaker, James D. - Environmental Quality Council - Natural Resources

(Signed) George Coordsen, Chairperson
Legislative Council
Executive Board

VISITORS

Visitors to the Chamber were Hannah and Paige Berryman from Papillion; and a group of citizens who are members of the "Nebraskans Against the Death Penalty."

ADJOURNMENT

At 4:25 p.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Friday, November 8, 2002.

Patrick J. O'Donnell
Clerk of the Legislature

